

PT 00-46

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**NORTH SUBURBAN SYNAGOGUE
BETH EL,**

APPLICANT

**Docket No: 00-PT-0051
(99-49-172)
Real Estate Exemption**

**For 1999 Tax Year
P.I.N. 16-25-106-001**

Lake County Parcel

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Ms. Michelle A. Jackson on behalf of the applicant.

SYNOPSIS:

This proceeding raises the issue of whether the cantor's residence located on the subject property, identified by Lake County Parcel Index Number 016-25-106-001 (hereinafter the "subject property") qualifies for exemption from 1999 real estate taxes under 35 ILCS 200/15-40, which exempts, "[a]ll property used exclusively for religious purposes."

The controversy arises as follows: On November 29, 1999, North Suburban Synagogue Beth El (hereinafter "North Suburban" or "Applicant"), owner of the subject

property, filed a Real Estate Exemption Complaint for the cantor's residence with the Board of Appeals of Lake County (hereinafter the "Board"). The Board reviewed the Applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that a full year exemption be granted for the subject property. Dept. Ex. No. 1.

On May 4, 2000, the Department rejected the Board's recommendation finding that the property was not in exempt use in 1999. Dept. Ex. No. 2. On May 17, 2000, the Applicant filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on October 17, 2000, with Mr. Richard M. Smith, executive director of North Suburban, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be granted an exemption for the 1999 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt use in 1999.
2. North Suburban is part of the conservative movement of the Jewish faith. In accordance with Biblical tradition, and to set an example for the Congregation, the rabbi and the cantor do not drive on the Sabbath or on holidays. Tr. pp. 7-8, 12-13.
3. North Suburban has a rabbi and an assistant rabbi, whose responsibilities are to lead the services, teach and counsel. The rabbi lives in a home owned by the Congregation across the street from the Synagogue. Tr. pp. 8-9; Applicant's Ex. No. 1.

4. The cantor is in charge of the liturgy for the services, the choir and the music for high holy days. The cantor tutors for bar mitzvah and may perform weddings and funerals if the rabbi is not available. The cantor is called “Hazzan” in Hebrew. Tr. pp. 10-11.
5. “The Role, Responsibilities and Duties of the Hazzan” issued by North Suburban in April, 1987, and in effect in 1999, describes the position of the cantor: “The Hazzan is a religious leader of the Congregation who leads the Congregation in prayer and is authorized to officiate together with the Rabbi at all religious services and rites...” “He should at all times conduct himself in a manner consistent with that role and in accordance with traditional Jewish observances; in this regard his residence should be within walking distance of the Congregation.” Tr. pp. 11-12; Applicant’s Ex. Nos. 2, 3.
6. North Suburban’s previous cantor purchased his own residence approximately one-half mile from the Synagogue. North Suburban reimbursed him for property taxes and mortgage payments. Tr. pp. 14-15.
7. When the previous cantor left, North Suburban conducted a national search for a new cantor. Most of the candidates who applied were not financially able to purchase a home in the area. On August 24, 1998, the subject property was purchased for the new cantor, his spouse and children. Tr. pp. 14-15; Applicant’s Ex. Nos. 4, 6.
8. The cantor’s employment contract with North Suburban states that the Congregation will provide a residence “for the sole use of you and your immediate family.” The Congregation has the responsibility to maintain the residence. In the event of the cantor’s incapacity or death, the cantor and/or his family will be entitled to live in the residence for a period of six months. Tr. p. 16; Applicant’s Ex. No. 5.

9. At the time the cantor was hired, there were three residences for sale within one mile of North Suburban. Two of the residences were not in North Suburban's price range. The subject property is within one mile of North Suburban. Tr. pp. 16-17.
10. The cantor does not pay rent. All expenses of the residence are paid for by the Congregation. The cantor has meetings at the residence, and has met with the choir there. It is also a meeting place for Congregational families and for youth programs. Tr. pp. 17-18; Applicant's Ex. No. 6.

CONCLUSIONS OF LAW:

An examination of the record establishes that North Suburban has demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the cantor's residence for tax year 1999. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the

constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for schools and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents, and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325, 329 (2d Dist. 1987). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even

though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87, 98 (1983).

The pivotal question to be determined in the instant case is what is the primary purpose of the property involved. Housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; and (2) they are used as “housing facilities provided for ministers”; and (3) such ministers reside in the facility “as a condition of employment.” 35 ILCS 200/15-40.

It is undisputed that the subject property was purchased by North Suburban on August 24, 1998. Applicant’s Ex. No. 4. The residence serves as a housing facility for the cantor and his family. The cantor is ordained. Tr. p. 11. “The Hazzan is a religious leader of the Congregation who leads the Congregation in prayer and is authorized to officiate together with the rabbi at all religious services and rites of the Congregational family.” Applicant’s Ex. No. 2. Accordingly, I conclude that the residence is owned by North Suburban and is a “housing facility provided for ministers” as required by the statute.

A parsonage qualifies for an exemption if it reasonable and substantially facilitates the aims of religious worship or religious instruction because the pastor’s duties require him to live in close proximity to the church. McKenzie v. Johnson, 98 Ill. 2d 87 (1983). The subject property was purchased by North Suburban specifically for the cantor. Tr. p. 20. North Suburban, as part of the conservative movement of the Jewish faith, requires that clergy not drive on the Sabbath or on holidays. This is in accordance with Biblical tradition and sets an example for the Congregation. Tr. pp. 12-13. Accordingly, the cantor’s religious duties require him to live in close proximity to the

Synagogue. Tr. p. 21. “It was a condition of [the cantor’s] employment to walk to the synagogue on the Sabbath and on holidays.” Tr. p. 20. I conclude therefore, that the cantor resides on the subject property as a “condition of his employment” as required by the exemption statute.

Furthermore, the residence qualifies for exemption under Section 15-40 because it facilitates the aims of religious worship at the Synagogue. The cantor has meetings at the residence, and has met with the choir there. The residence is used as a meeting place for Congregational families and for youth programs. Tr. pp. 17-18. The residence is also used as a place for “study, preparation and practice of the liturgy.” Applicant’s Ex. No. 6. The testimony established that religious activities were carried on in the residence, and that the residence was utilized to facilitate religious worship at the Synagogue.

WHEREFORE, for the reasons stated above, it is recommended that the subject property be granted an exemption from property tax for the 1999 tax year.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

November 20, 2000